

Memorandum

Date : April 15, 1998

To : All Holders of the Enforcement Division's
Case Analysis Manual

From : Department of Fair Employment & Housing
Office of the Deputy Director - Enforcement Division
(213) 439-6761 CALNET 8-213-439-6761

Subject : Revisions to the Case Analysis Manual

I am pleased to release the first of a series of revisions to the Enforcement Division's Case Analysis Manual. Attached find the revisions to the *Disability* and *Pregnancy* sections. These revisions are long overdue and are a part of the Enforcement Division's commitment to upgrade and improve all of our technical materials, enhance the skill level of staff and improve our delivery of service to the public.

After familiarizing yourself with the contents of these sections, please file them in Chapter VII of your manual as follows:

CHANGE

Change tab on
Section 9. PHYSICAL HANDICAP to read
Section 9. DISABILITY

REMOVE

Section 9. PHYSICAL HANDICAP
Physical Handicap - 1 through
Physical Handicap - C1

Section 10. PREGNANCY
Pregnancy - 1 through
Pregnancy - 48

INSERT

Section 9. DISABILITY
Disability - 1 through
Disability - C5

Section 10. PREGNANCY
Pregnancy - 1 through
Pregnancy - 81

WANDA J. KIRBY
Deputy Director

Attachments

Memorandum

.te : July 2, 1997

To : All Holders of Case Analysis Manual
All Enforcement Division Staff

From : Department of Fair Employment & Housing
Wanda J. Kirby, Deputy Director
(213) 439-6761

Subject : Modification of Fair Employment and Housing Act (FEHA) Filing Statute of Limitations:
Romano v. Rockwell, Inc. (1996) 14 Cal.4th 479

The purpose of this memorandum is to inform you that a recent California Supreme Court decision has changed the way the Fair Employment and Housing Act's (FEHA) filing statute of limitations is calculated.

TERMINATION CASES:

In the past, the date of harm that triggered the one-year statute of limitations for filing a Department of Fair Employment and Housing (DFEH) complaint was the date the Complainant was notified that termination, layoff, involuntary layoff, etc., was going to occur. Pursuant to the California Supreme Court's decision in Romano v. Rockwell, Inc. (1996) 14 Cal.4th 479, the date of harm should now be calculated as the date the termination actually occurred.

The facts in Romano are as follows. On December 6, 1988, the Respondent notified Romano that he would be terminated if he did not accept involuntary retirement effective May 31, 1991. Romano worked until May 31, 1991 and was forced to retire on that day. The date that triggered the running of the DFEH filing statute of limitations was May 31, 1991, **NOT** the earlier date on which Romano was notified that he was going to be terminated. Romano filed his DFEH complaint on September 18, 1991, and the court found that his complaint was timely filed.

SELECTION CASES:

The Romano v. Rockwell case involved a termination/involuntary retirement act of harm. Although the Romano case did not specifically address the filing statute of limitations for selection cases (e.g., hire, promotion, transfer, etc.), the legal and policy arguments regarding termination appear to apply equally well to selection cases. However, to provide the greatest possible protection to potential complainants, to the extent possible, staff should make every effort to schedule intake interviews and facilitate the filing of complaints within one year from the date of notification of the alleged unlawful act. Complaints should be accepted, however, as long as they can be filed within one year from the date of the alleged unlawful occurrence which is frequently the date the successful applicant assumes the position for which the complainant applied.

EVICTION CASES:

Government Code section 12980, subdivision (a), governs the filing statute of limitations for housing cases. It states: "No complaint may be filed after the expiration of one year from the date upon which the alleged violation occurred or terminated." The wording of this section is very similar to Government Code section 12960 interpreted by the court in Romano v. Rockwell, Inc., which states: "No complaint may be filed after the expiration of one year from the date upon which the alleged unlawful practice or refusal to cooperate occurred;" (Gov. Code, §12980).

Following the logic of the Romano case, the filing statute of limitations should be construed liberally and calculated as the date the complainant actually vacates the premises. However, the application of Romano to eviction cases remains an open legal issue. DFEH staff are likely to encounter arguments that the filing statute of limitations should commence on the date complainants can reasonably be expected to know that they should act to protect their rights, e.g., receipt of a three-day notice, service of an eviction notice, service of an unlawful detainer action, initiation of a lock-out, or the date a landlord refuses to accept rent from a tenant who is still occupying the premises.

Given the unsettled legal issue regarding the application of Romano to housing cases, and the necessity to provide the greatest possible protection to potential complainants, the following procedures apply:

- 1) To the extent possible, Housing Unit staff should make every effort to ensure that housing eviction cases are filed within one year of the notification of the alleged unlawful act;
- 2) In those instances where complaints are not filed within one year of the notification of the alleged unlawful act, a complaint should still be accepted as long as it can be filed within one year of the date the complainant actually vacates the premises.

IMPACT OF ROMANO V. ROCKWELL ON DFEH COMPLAINTS THAT ARE DUAL-FILED WITH THE EEOC:

Under federal law, the statute of limitations for filing a complaint with the Equal Employment Opportunity Commission (EEOC) is triggered by the date the Complainant is notified of an alleged unlawful practice. EEOC complaints must be filed within 300 days from the date the Complainant receives notification of the alleged discrimination. Given these differences between the filing statute of limitations governing DFEH and EEOC complaints, intake staff should make every effort to expedite the filing of

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complaints that may be in danger of falling outside the EEOC filing statute of limitations.

REVISION OF GROUP INTAKE VIDEO:

The existing Group Intake Video has been revised to incorporate the holding of the Romano case. The revised Intake Video will be forwarded shortly.

REVISION OF CASE ANALYSIS MANUAL - JURISDICTION CHAPTER:

The attached eight-page revision to the Jurisdiction Chapter of the Case Analysis Manual explains the rationale behind the Romano decision. District Administrators and the Communication Center Administrator should discuss this revision, the revised Group Intake Video and this memorandum with all Consultant and Communication Center staff immediately. Questions about the application of the Romano case should be directed to assigned staff counsel.

After familiarizing yourself with this memorandum and its attachments, file the memorandum behind the Table of Contents in the Intake Chapter of the Consultant / Basic Training Manual. File the Case Analysis Manual revision in the Jurisdiction Chapter of the Case Analysis Manual by removing the 1990 version of existing pages 5 through 9 and substituting the 1997 version of pages 5 through 9.

WANDA J. KIRBY
Deputy Director
Enforcement Division

Attachment

cc: Nancy C. Gutierrez
Richard DeCuir
Jeanne Moore

Department of Fair Employment and Housing

CASE ANALYSIS MANUAL

REVISION RECORD SHEET NO. 12

JANUARY 31, 1992

This revision register contains all of the revisions or additions to the Department of Fair Employment and Housing's Case Analysis Manual made since 3/25/91. This is the twelfth revision register.

Page Changes

Remove Old Pages

Termination 21-22

Selection 23-24

Constructive Discharge 14-15

Harassment 35-36, 37

Sexual Harassment 55-56, 57

Physical Handicap 42

Pregnancy 1-2

Sex-BFOQ 1-2, 3

Remedy 38 through 44

Jurisdiction 18-19

Rent 1, 2-3, 10-11

Unruh 1-2

Insert Attached Pages

Termination 21-22

Selection 23-24

Constructive Discharge 14-15

Harassment 35-36, 37

Sexual Harassment 55-56, 57-58

Physical Handicap 42

Pregnancy 1-48

Sex-BFOQ 1-2, 3

Remedy 38 through 45

Jurisdiction 18-19

Rent 1, 2-3, 10-11, A1-A2, A3-A4

Unruh 1-2, 3, A1-A2, A3

Please retain this revision record sheet at the back of Volume II so there will always be a record of the changes or additions to the Case Analysis Manual.

Department of Fair Employment and Housing

CASE ANALYSIS MANUAL

REVISION RECORD SHEET NO. 11

DECEMBER 26, 1990

This revision register contains all of the revisions or additions to the Department of Fair Employment and Housing's Case Analysis Manual made since 2/15/90. This is the eleventh revision register.

Remove and recycle all pages in Volumes I and II (excepting the Revision memos and Revision Record Sheets). Replace with this re-issued version.

Please retain this revision record sheet at the back of Volume II so there will always be a record of the changes or additions to the Case Analysis Manual.

Department of Fair Employment and Housing

CASE ANALYSIS MANUAL

REVISION RECORD SHEET NO. 10

FEBRUARY 15, 1990

This revision register contains all of the revisions or additions to the Department of Fair Employment and Housing's Case Analysis Manual made since 2/15/90. This is the tenth revision register.

SECTION CHANGES, ADDITIONS, OR CORRECTIONS

Volume II. A. Employment

Subchapter 3. Constructive Discharge Cases

Revised references to DFEH v. Jack's Restaurant; replaced discussion of Jack's Restaurant with DFEH v. Madera County

Subchapter 5. Harassment Cases

Replaced discussions and references to DFEH v. Rockwell International with DFEH v. Del Mar Avionics; revisions in Analytical Outlines

Subchapter 6. Sexual Harassment Cases

Replaced discussion of DFEH v. Rockwell International with DFEH v. Del Mar Avionics; added DFEH v. Huncot Properties to textual discussion; revisions in Analytical Outlines

Subchapter 9. Physical Handicap Cases

Revised references to DFEH v. Raytheon Corp.

Subchapter 15. Adverse Impact Cases

Section a.4) "The Law: Sources of Legal Standards for Adverse Impact Cases"

Added Wards Cove Packing Co. v. Atonio, (1989) U.S. 110 S.Ct. 38 to "Court Decisions on Commission Cases"

Subchapter 16. Remedy

Eliminated discussion of punitive damages; added discussion of DFEH v. Aluminum Precision Products; revised references to Commission decisions affected by court orders

Volume II. B. Housing

Subchapter 1. Failure to Rent Cases

Added reference to physical handicap and blindness coverage by Unruh Civil Rights Act

Subchapter 2. Eviction Cases

Added reference to physical handicap and blindness coverage of
Unruh Civil Rights Act

PAGE CHANGES

REMOVED OLD PAGES

Constructive Discharge
6 through 7-2, 14-15 (8/1/84)

Harassment 8 through 12,
14 through 18, 27 through 31,
39-40 (6/1/89)

Sexual Harassment 14 through 17,
20 through 26, 29-30, 35-36,
41-42, 51-52, 64-65 (6/1/89)

Physical Handicap 18 through 20
(05/30/89)

Adverse Impact 1-2 (5/30/82)

Remedy 1, 6 through 12-4,
14 through 17, 46 through 63
(4/15/86)

Jurisdiction C-17-C-18,
D-5 through D-7 (5/18/88)

Failure to Rent 2-3 (5/30/89)

Eviction 2-3 (08/01/84)

INSERT ATTACHED PAGES

Constructive Discharge
6 through 7-2, 14-15 (2/15/90)

Harassment 8 through 12,
14 through 18, 27 through 31,
39-40 (2/15/90)

Sexual Harassment 14 through 17,
20 through 26, 29-30, 35-36,
41-42, 51-52, 64-65 (2/15/90)

Physical Handicap 18 through 20
(2/15/90)

Adverse Impact 1-2 (2/15/90)

Remedy 1, 6 through 12-4,
14 through 17, 46 through 54
(2/15/90)

Jurisdiction C-17-C-18,
D-5 through D-7 (2/15/89)

Failure to Rent 2-3 (2/15/90)

Eviction 2-3 (2/15/90)

Please retain this revision record sheet at the back of Volume II so there
will always be a record of the changes or additions to the Case Analysis
Manual.

Department of Fair Employment and Housing

CASE ANALYSIS MANUAL

REVISION RECORD SHEET NO. 9

JUNE 15, 1989

This revision register contains all the revisions or additions to the Department of Fair Employment and Housing's Case Analysis Manual made since 6-1-89. This is the ninth revision register.

SECTION CHANGES, ADDITIONS, OR CORRECTIONS

Volume I: Table of Contents Updated version

Volume II. A. Employment

Subchapter 1. Termination Cases

Section a.4) "The Law: Sources of Legal Standards for Termination Cases"

Commission Precedential Decisions updated with summaries; "Court Decisions on Commission Cases" added; Commission Decisions on Appeal" added.

Subchapter 2. Selection Cases

Section a.4) "The Law: Sources of Legal Standards for Selection Cases"

Commission Precedential Decisions updated with summaries; "Court Decisions on Commission Cases" added; Commission Decisions on Appeal" added.

Subchapter 3. Constructive Discharge Cases

Section a.4) "The Law: Sources of Legal Standards for Constructive Discharge Cases"

Commission Precedential Decisions updated with summaries; "Commission Decisions on Appeal" added.

Subchapter 4. Retaliation Cases

Section a.4) "The Law: Sources of Legal Standards for Retaliation Cases"

Commission Precedential Decisions updated with summaries; "Court Decisions on Commission Cases" added.

Subchapter 5. Harassment Cases

Revised Subchapter added.

Subchapter 6. Sexual Harassment Cases

Revised Subchapter added.

Subchapter 7. Pay Discrimination Cases

Section a.4) "The Law: Sources of Legal Standards for Pay Discrimination Cases"

Commission Precedential Decisions added.

Subchapter 8. Religion Cases

Section a.4) "The Law: Sources of Legal Standards for Religion Cases"

Commission Precedential Decisions and Non-Commission cases added.

Subchapter 9. Physical Handicap Cases

Section a.4) "The Law: Sources of Legal Standards for Physical Handicap Cases"

Commission Precedential Decisions updated; "Commission Decisions on Appeal" added.

Subchapter 10. Pregnancy Cases

Section a.4) "The Law: Sources of Legal Standards for Pregnancy Cases"

Commission Precedential Decisions added; "Non-Commission Decisions" added.

Subchapter 11. Sex-BFOQ

Section a.4) "The Law: Sources of Legal Standards for Sex-BFOQ Cases"

Commission Precedential Decisions added; "Non-Commission Decisions" added; "Commission Decisions on Appeal" added.

Subchapter 13. Marital Status Cases

Section a.4) "The Law: Sources of Legal Standards for Marital Status Cases"

Commission Precedential Decisions added; "Commission Decisions on Appeal" added.

Subchapter 15. Adverse Impact Cases

Section a.4) "The Law: Sources of Legal Standards for Adverse Impact Cases"

Commission Precedential Decisions added; "Non-Commission Cases" added; "Court Decisions on Commission Cases" added.

Subchapter 16. Remedy

Section a.4) "The Law: Sources of Legal Standards for Remedy Cases"

Commission Precedential Decisions updated; "Commission Decisions on Appeal" added.

Volume II. B. Housing

Subchapter 1. Failure to Rent Cases

Section a.3) "The Law: Sources of Legal Standards for Failure to Rent Cases"

Commission Precedential Decisions updated.

Subchapter 2. Eviction Cases

Section a.3) "The Law: Sources of Legal Standards for Eviction Cases"

Statute reference expanded.

Volume II. C. Unruh

Subchapter 1. Failure to Rent Cases

Section a.3) "The Law: Sources of Legal Standards for Unruh Act Cases"

Commission Precedential Decisions added; "Non-Commission Cases" added.

PAGE CHANGES

REMOVE OLD PAGES

Table of Contents iv through xiv
(05/30/89)

Termination 4 through 5 (11/30/82)

Selection 4 through 5 (11/30/82)

Constructive Discharge
6 through 7 (08/01/84)

Retaliation 10 through 11 (01/01/83)

Harassment 1 through 46 (05/01/86)

Sexual Harassment 1 through 65
(01/01/83)

Religion 13 through 14 (04/25/83)

INSERT ATTACHED PAGES

iv through xiv (05/30/89)

Termination 4 through 5-2 (05/30/89)

Selection 4 through 5-3 (05/30/89)

Constructive Discharge
6 through 7 (05/30/89)

Retaliation 10 through 11-2
(5/30/89)

Harassment 1 through 40 (5/01/89)

Sexual Harassment 1 through 65
(06/01/89)

Pay Discrimination 1 (05/30/89)

Religion 13 through 14-2 (05/30/89)

Physical Handicap 18 through 20
(01/01/85)

Remedy 8 through 12 (04/15/86)

Failure to Rent 6 through 7
(08/01/84)

Eviction 4 through 5 (08/01/84)

Physical Handicap 18 through 20
(05/30/89)

Pregnancy 1 (05/30/89)

Sex-BF0Q 1-3 (05/30/89)

Marital Status 1 (05/30/89)

Adverse Impact 1 through 2
(05/30/89)

Remedy 8 through 12-4 (05/30/89)

Failure to Rent 6-1 through 7
(05/03/89)

Eviction 4 through 5 (05/30/89)

Unruh 1 through 2 (05/30/89)

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Department of Fair Employment and Housing

CASE ANALYSIS MANUAL

REVISION RECORD SHEET NO. 8

JULY 30, 1988

This revision register contains all the revisions or additions to the Department of Fair Employment and Housing's Case Analysis Manual made since 7-1-88. This is the eighth revision register.

SECTION CHANGES, ADDITIONS, OR CORRECTIONS

Volume I: Table of Contents Updated version

Volume I: Subchapter VI. Maintenance Procedure New subchapter added

PAGE CHANGES

REMOVE OLD PAGES

Table of Contents iv-viii (11/30/82)

INSERT ATTACHED PAGES

iv-xiv (7/30/88)

VI-1 to VI-2 (7/30/88)
(Remove divider from
Volume II and place it in
front of Chapter VI in
Volume I. Insert new
divider VII in Volume II.)

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Department of Fair Employment and Housing

CASE ANALYSIS MANUAL

REVISION RECORD SHEET NO. 7

JULY 1, 1988

This revision register contains all the revisions or additions to the Department of Fair Employment and Housing's Case Analysis Manual made since 5-1-88. This is the seventh revision register.

SECTION CHANGES, ADDITIONS, OR CORRECTIONS

Volume II: A. Employment

Subchapter 17. JurisdictionNew subchapter added.

PAGE CHANGES

REMOVE OLD PAGES

INSERT ATTACHED PAGES

Jurisdiction 1 through
5, A1-A17, B1-B6,
C1-C18, and D1-D7.

RELABEL

Relabel divider 17 ("Benefit Remedies")
or obtain a new divider. The new label
should read "Jurisdiction."

Please retain this revision record sheet at the back of Volume II so there will always be a record of the changes or additions to the Case Analysis Manual.

Department of Fair Employment and Housing

CASE ANALYSIS MANUAL

REVISION RECORD SHEET NO. 6

MAY 1, 1986

This revision register contains all the revisions or additions to the Department of Fair Employment and Housing's Case Analysis Manual made since 4-15-86. This is the sixth revision register.

SECTION CHANGES, ADDITIONS, OR CORRECTIONS

Volume II: A. Employment

Subchapter 5. Harassment.....New subchapter added.

PAGE CHANGES

REMOVE OLD PAGES

INSERT ATTACHED PAGES

Harassment 1 through 46.

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Department of Fair Employment and Housing

CASE ANALYSIS MANUAL

REVISION RECORD SHEET NO. 5

APRIL 15, 1986

This revision register contains all the revisions or additions to the Department of Fair Employment and Housing's Case Analysis Manual made since 4-25-85. This is the fifth revision register.

SECTION CHANGES, ADDITIONS, OR CORRECTIONS

Volume II: A. Employment

Subchapter 16. Remedy.....New subchapter added.

PAGE CHANGES

REMOVE OLD PAGES

REMOVE OLD DIVIDERS

- 17. Benefit Remedies
- 18. Compensatory and Punitive Damages

INSERT ATTACHED PAGES

Remedy 1 through 63,
A1 through A8, B1 through
B6, C1 through C5.

RELABEL

Relabel divider 16
(Back Pay and Front Pay).
The new label should read
"Remedy."

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Department of Fair Employment and Housing

CASE ANALYSIS MANUAL

REVISION RECORD SHEET NO. 4

April 25, 1985

This revision register contains all the revisions or additions to the Department of Fair Employment and Housing's Case Analysis Manual made since 1-1-85. This is the fourth revision register.

SECTION CHANGES, ADDITIONS, OR CORRECTIONS

Volume II: A. Employment

Subchapter 8: Religion CasesNew subchapter added.

PAGE CHANGES

REMOVE OLD PAGES

- - - - -

INSERT ATTACHED PAGES

Religion-1 through 38.

Please retain this revision record sheet at the back of Volume II so there will always be a record of the changes or additions to the Case Analysis Manual.

Department of Fair Employment and Housing

CASE ANALYSIS MANUAL

REVISION RECORD SHEET NO. 3

JANUARY 1, 1985

This revision register contains all the revisions or additions to the Department of Fair Employment and Housing's Case Analysis Manual made since 8-1-84. This is the third revision register.

SECTION CHANGES, ADDITIONS, OR CORRECTIONS

Volume II: A. Employment

Subchapter 9. Physical Handicap Cases.....New subchapter added.

PAGE CHANGES

REMOVE OLD PAGES

Draft Legal Standards and
Analytical Outline for
Physical Handicap Cases--
7 pages, dated 12-30-82

INSERT ATTACHED PAGES

Physical Handicap-1
through 47, A1 through A8,
B1 through B2.

Please retain this revision record sheet at the back of Volume II so there will always be a record of the changes or additions to the Case Analysis Manual.

Department of Fair Employment and Housing

CASE ANALYSIS MANUAL

REVISION RECORD SHEET NO. 2

AUGUST 1, 1984

This revision register contains all the revisions or additions to the Department of Fair Employment and Housing's Case Analysis Manual made since 2-1-84. This is the second revision register.

SECTION CHANGES, ADDITIONS, OR CORRECTIONS

Volume II: A. Employment

Subchapter 3. Constructive Discharge Cases.....New subchapter added.

Volume II: B. Housing

Subchapter 1. Failure to Rent Cases.....New subchapter added.

Subchapter 2. Eviction Cases.....New subchapter added.

PAGE CHANGES

REMOVE OLD PAGES

Constructive Discharge-1 (11-30-82)

INSERT ATTACHED PAGES

Constructive Discharge-1
through 17 (8-1-84)

Rent-1 through 11 (8-1-84)

Eviction-1 through 8
(8-1-84)

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RR-2 (8-1-84)

Department of Fair Employment and Housing

CASE ANALYSIS MANUAL

REVISION RECORD SHEET NO. 1

FEBRUARY 1, 1984

This revision register contains all the revisions or additions to the Department of Fair Employment and Housing's Case Analysis Manual made since 1-1-83. This is the first revision register.

SECTION CHANGES, ADDITIONS, OR CORRECTIONS

Volume II: A. Employment

Subchapter 4. Retaliation Cases

Section a.2)b) "Discrimination Standards".....The legal standard has been more clearly defined by the Commission.

Section a.3) "The Law: Sources of the Legal Standards for Retaliation Cases".....Commission precedential decisions added.

Section b.2) "Explanation of Analytical Outline"--Issue IIClearer statement of the legal standard.

PAGE CHANGES

REMOVE OLD PAGES

6-7 (1-1-83)
8-9 (1-1-83)
10-11 (1-1-83)
16-17 (1-1-83)

INSERT ATTACHED PAGES

6-7 (2-1-84)
8-9 (2-1-84)
10-11 (2-1-84)
16-17 (2-1-84)

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RR-1 (2-1-84)